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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 531 of 1993  
Cuttack this the 12<sup>th</sup> day of January, 1998

Hemanta Kumar Nayak .. Applicant(s)

-VERSUS-

Union of India & Others .. Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes -
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO.

*Somnath Som*  
(SOMNATH SOM  
VICE-CHAIRMAN  
12.1.98)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 531 of 1993  
Cuttack this the 12<sup>th</sup> day of January, 1998

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

Hemanta Kumar Nayak  
S/o. Late B.K. Nayak  
Village-Denua, P.S.Raruan  
Tahasil-Karanjia  
Dist:Mayurbhanj

Applicant

By the Advocate:

Mr. D.N. Mishra

-VERSUS-

1. Union of India represented through its Secretary, Department of Post, Dak Bhawan, New Delhi
2. Chief Post Master General Orissa Circle, Bhubaneswar Dist:Puri
3. Superintendent of Post Offices, Mayurbhanj Division Baripada

Respondents

By the Advocate:

Mr. Ashok Mishra,  
Senior Panel Counsel  
(Central)

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: This Original Application was disposed of by the Division Bench in order dated 29.4.1994. Against that order the Respondents went on appeal to the Hon'ble Supreme Court in Civil Appeal No. 5447/97 which was disposed of in order

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dated 8.8.1997. The relevant portion of the order of their Lordships is quoted below :

\* We are constrained to observe that the Tribunal acts judicially. Its order must, therefore, be a speaking order, particularly when, as it has noted, counsel for the appellants had objected to the appointment of the respondent on compassionate grounds. The order under appeal contains no reasoning whatever.

We, therefore, set aside the order under appeal and remand the respondent's application (Original Application No.531/93 to the Central Administrative Tribunal, Cuttack, for being heard and disposed of afresh, having due regard to what we have stated in this order. Considering the passage of time, the application shall be disposed of expeditiously."

The Hon'ble Supreme Court in the above order gave liberty to the parties to file additional documents. But no documents were filed by either side.

2. I have heard the learned counsel for the petitioner and learned Senior counsel Shri Ashok Mishra, appearing on behalf of the Respondents. On 23.12.1997, learned counsel for the applicant wanted time till 2.1.1998 for filing written submissions. It was, however, noted in the order-sheet that if no written submission is filed by 2.1.1998, orders will be delivered without waiting for filing of written submission. Till to-day no written submission has been filed by the learned counsel for the petitioner and as such the matter is taken up for orders.

3. In this Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has

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prayed for a direction to Respondents to give him appointment on compassionate ground as Branch Post Master, Denua in Mayurbhanj District by quashing Annexure-A/4.

4. The facts of the case, according to applicant, are that his father was working as Branch Post Master, Denua and while working as such, he passed away on 12.7.1992. Within two months of the death of his father, the mother of the applicant filed a representation at Annexure-1 for giving compassionate appointment to her son (the present applicant) as he would look after the family. The applicant had registered his name in the Employment Exchange vide Certificate of Registration at Annexure-A/2. Respondent No. 3 directed the applicant to submit the required documents and while the applicant was awaiting for a favourable order, in order dated 23.7.1993 (Annexure-A/4) his case for compassionate appointment in relaxation of normal recruitment rules was rejected by the Circle Relaxation Committee on 23.6.1993 and the same was communicated to the applicant as referred above. After the death of the father the condition of the family of the applicant and her mother have become indigent. It is further submitted that the two other sons of the ex-employee (father of the applicant) had separated from the family during the life time of

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the father. In view of the above the applicant has come up with the aforesaid prayer.

5. The Respondents have filed counter in which they have conceded that the father of the applicant passed away on 12.7.1992 while working as E.D.B.P.M., Denua. The applicant's mother applied for giving compassionate appointment to the present applicant in the post of E.D.B.P.M. The information was collected by Respondent No.3, on receipt of the request of appointment of the applicant in course of which it was noted that the family of the deceased employee has an annual income of Rs.6000/- from agricultural land, besides the second son of the deceased is serving in Bank of Baroda with annual income of Rs.40,000/-. The applicant is a non-matric and is also a minor. It is further submitted by the Respondents that the Headmaster corrected the date of birth of the applicant to 16.3.1974 on the strength of an affidavit made before the Executive Officer, Karanjia. But on verification, the District Inspector of Schools, Karanjia, reported that the actual date of birth of the applicant, as per Admission Register is 16.3.1975. The applicant does not possess the requisite qualification which is H.S.C. for the post of E.D.B.P.M. and therefore, the Respondents did not recommend the case of the applicant for compassionate appointment. The Circle

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Relaxation Committee considered the matter and observed that the second son of deceased E.D. official is in employment and the family is not considered indigent. As such on the above ground the prayer of the applicant for compassionate appointment was rejected. The Respondents have further stated that the averment in the application that other two brothers had separated from the family is not correct. In the synopsis given by the applicant himself he has mentioned his two brothers as members of the family and even the wife and the son of his eldest brother Jadumani Naik. He has also noted the marriage liability of his elder brother who is serving in Bank of Baroda in the synopsis. On this basis the Respondents have contested the averment that the two brothers have been separated from the family of the ex-deceased postal employee.

6. The applicant has filed a rejoinder in which it has been stated that during the inquiry, Respondent No.3 was intimated that the two brothers have been separated from the family, but, even then it was not taken into account. As regards correction of date of birth, it has been stated that at the time of joining the School a wrong date of birth was given and it was later on corrected to 16.3.1974. As regards the qualification for the post of E.D.B.P.M., it has been submitted that the qualification for the

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post of E.D.B.P.M. was fixed as Matriculation in letter dated 12.3.1993 which came into force with effect from 26.3.1993. This has no application in the case of the petitioner as the father of the applicant died on 12.7.1992 and the mother of the applicant applied thereafter on 11.9.1992 vide Annexure-A/1 for compassionate appointment. As such the requirement of Matriculation pass cannot be insisted upon in the case of the applicant. It is further submitted that all the relevant considerations have not been taken into account by the Circle Relaxation Committee.

7. I have heard the learned counsel for the petitioner and learned Senior counsel Shri Ashok Mishra appearing on behalf of the Respondents. The first point is about the minimum qualification for the post of E.D.B.P.M. This has been laid down in the Circular dated 12.3.1993 and in this Circular in para-4, it has been specifically mentioned that this order will come into force with effect from 1st April, 1993. Therefore, it is clear that the minimum educational qualification for the post of E.D.B.P.M. became Matriculation from 1.4.1993. The applicant's case is that since his father passed away on 12.7.1992 and her mother applied in September, 1992, Matriculation qualification should not be insisted upon. More so, because it has been

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held by the Hon'ble Supreme Court that cases relating to compassionate appointment should be considered expeditiously and where needed compassionate appointment provided. While the above aspect is absolutely correct, the fact remains that by the time the applicant's case for compassionate appointment came up before the Circle Relaxation Committee, the minimum qualification has been changed to Matriculation. The applicant did not have the minimum qualification. Therefore, on the date of consideration he was not qualified.

8. The second aspect is about the financial condition of the family. Besides the annual income of Rs.6000/- from agricultural land, the respondents have relied on the fact that applicant's brother is working in Bank of Baroda and is getting annual income of Rs.40,000/-. The applicant has submitted that his brother has been separated from the joint family in the life time of the father. But it has been pointed out by the Respondents that the applicant himself in the synopsis has mentioned his brother, wife and his son as members of the joint family. The liability incurred at the time of marriage of his brother who is serving in Bank of Baroda has also been mentioned in the synopsis given

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 by the applicant. In view of this, it is not possible to hold that the applicant's brother has been separated from the joint family in the life time of the father.

9. Lastly the applicant has got his date of birth corrected from 16.3.1975 to 16.3.1974 on the basis of an affidavit made before the Executive Officer, Karanjia, basing on which the Headmaster has corrected the date of birth. But the District Inspector of Schools has reported that the actual date of birth of the applicant, as per Admission Register, is 16.3.1975. However, this objection is not very material because the Circle Relaxation Committee rejected the prayer for compassionate appointment in order dated 23.6.1993 by which time the applicant had already become a major even going by his date of birth as 16.3.1975.

10. From the above analysis, it appears that the applicant did not have the minimum qualification for being appointed as E.D.B.P.M., Denua, for which post the representation at Annexure-1 was made. The finding of the Circle Relaxation Committee that the financial condition of the family is not indigent cannot be held to be without any basis.

11. In view of the above, it is held that the applicant has not been able to make out a case for compassionate appointment as E.D.B.P.M., Denua. The application is, therefore, held to be without any merit and the same is rejected. But in the circumstances, no order as to costs.

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 12/11/98